

BARRIERS TO SETTLEMENT
LESSON #1

OVERCONFIDENCE

This year, Settlement Strategies will take a hard look at the most common barriers to settlement of legal disputes and how to avoid an impasse and achieve success in your negotiations.

The number 1 barrier to successful negotiation is overconfidence. Psychologists have dubbed overconfidence a "ubiquitous phenomenon". Both lawyers and clients may share unrealistic expectations of their chances of proving liability (or their defenses) and the likely award of damages. This can cause a kind of "cognitive blindness" to errors and poor judgment in decision-making. What's worse, if you are genuinely unreasonably confident, you will be statistically less likely to achieve an acceptable compromise at all.

You can combat the overconfidence phenomenon if you do this. When evaluating the likelihood of success, seek out someone who has more objectivity than you, your client or your adversary. Ask another attorney, a friend, a family member or a professional neutral to help you to approach the negotiation by looking at the full range of possible outcomes, not just the win/lose of a verdict.

You don't have to confess your uncertainty to your adversary or your client if you simply seek out the objective evaluation of a third party neutral in a confidential setting at the outset before negotiation begins. You can always disagree, but at least you will have begun to adjust your client's expectations and if you end up settling at the rate you expected you will have exceeded, not just met their expectation!